

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

OSTERHAUS PHARMACY, INC. on behalf
of itself and all others similarly situated,

Plaintiff,

v.

CVS HEALTH CORPORATION, CVS
PHARMACY, INC., CAREMARK Rx,
L.L.C. (f/k/a/ CAREMARK Rx, INC.),
CAREMARK, L.L.C., CAREMARKPCS,
L.L.C., CAREMARK PCS HEALTH L.L.C.,
CAREMARK IPA, L.L.C., CAREMARK
PART D SERVICES, LLC, AETNA INC.,
AETNA HEALTH HOLDINGS, LLC, AND
AETNA HEALTH MANAGEMENT, LLC,

Defendants.

NO. 2:23-cv-01500-RSM

**DECLARATION OF JOSHUA P.
DAVIS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
COMPEL ARBITRATION**

I, Joshua P. Davis, declare as follows:

1. I am a member of the law firm of Berger Montague and co-counsel of record for Plaintiff in this matter. I am admitted *pro hac vice* to practice before this Court and am a member in good standing of the bar of the state of California. I respectfully submit this declaration in support of Plaintiff Osterhaus Pharmacy, Inc.'s Opposition to Defendants' Motion to Compel Arbitration. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration and could testify competently to them if called upon to do so.

2. Attached as Exhibit 1 is a true and correct copy of the Final Award and the Interim Award in *New York Cancer & Blood Specialists v. Caremark, LLC*, Case Number 01-21-0016-4612 in the American Arbitration Association Commercial Arbitration Tribunal.

DECLARATION OF JOSHUA P. DAVIS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
TO COMPEL ARBITRATION - 1
CASE NO. 2:23-cv-01500-RSM

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com

3. Attached as Exhibit 2 is a true and correct copy of Ex. 1 to an Oct. 12, 2023 letter from Kevin P. Shea to Plaintiffs' counsel attaching excerpts from the 2023 CVS Caremark Provider Manual.

4. Attached as Exhibit 3 is a true and correct copy of Order No. 7 in *New York Cancer & Blood Specialists v. Caremark, LLC*, Case Number 01-21-0016-4612 in the American Arbitration Association Commercial Tribunal.

5. Attached as Exhibit 4 is a true and correct copy of the Final Award in *AIDS Healthcare Foundation v. CVS Caremark*, Case No. 01-19-0004-0127 in the American Arbitration Association Commercial Tribunal.

6. Attached as Exhibit 5 is a true and correct copy of the Final Award in *Mission Wellness Pharmacy, LLC v. Caremark, LLC*, Case No. 01-19-0000-3552 in the American Arbitration Association Commercial Tribunal.

7. Attached as Exhibit 6 is a true and correct copy of the Order Confirming Arbitration Award in *Mission Wellness Pharmacy, LLC v. Caremark LLC, et al.*, 2:22-cv-00967-GMS in the United States District Court for the District of Arizona, bearing docket number 57.

8. Attached as Exhibit 7 is a true and correct copy of the Order Confirming Arbitration Award in *Caremark LLC, et. al. v. AIDS Healthcare Foundation*, 2:21-cv-01913-DJH in the United States District Court for the District of Arizona, bearing docket number 78.

9. Attached as Exhibit 8 is a true and correct copy of exhibits to a Request for Judicial Notice including a letter from Kim Riley Law to CVS Counsel dated November 11, 2021 in *Caremark LLC, et. al. v. AIDS Healthcare Foundation*, 2:21-cv-01913-DJH in the United States District Court for the District of Arizona, bearing docket number 61-9

10. Attached as Exhibit 9 is a true copy of the written testimony of Jonathan Levitt before the United States Senate Committee on Finance, dated March 27, 2023.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

1 EXECUTED at SAN FRANCISCO, CALIFORNIA and DATED this 5th day of
2 February, 2024.

3
4 By: /s/ Joshua P. Davis
5 Joshua P. Davis, *Admitted Pro Hac Vice*
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

DECLARATION OF JOSHUA P. DAVIS IN SUPPORT OF
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION
TO COMPEL ARBITRATION - 3
CASE NO. 2:23-cv-01500-RSM

TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
TEL. 206.816.6603 • FAX 206.319.5450
www.terrellmarshall.com